

# COUNTY OF YORK

## MEMORANDUM

**DATE:** March 22, 2004 (BOS Mtg. 4/6/04)

**TO:** York County Board of Supervisors

**FROM:** James O. McReynolds, County Administrator

**SUBJECT:** Application No. ZM-82-04 (Conditional), Seaford Scallop Co., Inc.

### ISSUE

This application seeks to amend the York County Zoning Map by reclassifying an approximately 1.8-acre portion of a 3.32-acre parcel of land located at 413 Shirley Road (Route 626), approximately 262 feet east of the intersection of Shirley Road and Ironmonger Lane (private road) and further identified as Assessor's Parcel No. 25-27B, from RR (Rural Residential) to WCI (Water-oriented Commercial/Industrial) subject to conditions voluntarily proffered by the property owner.

### DESCRIPTION

- Property Owner: Seaford Scallop Company, Inc.
- Location: 413 Shirley Road (Route 626)
- Area: Approximately 1.8 acres of a 3.32-acre parcel
- Frontage: Approximately 170 feet along Shirley Road; total lot frontage is approximately 320 feet.
- Utilities: Public water and sewer
- Topography: Relatively flat
- 2015 Land Use Map Designation: Limited Business
- Zoning Classification: RR – Rural Residential
- Existing Development: A single-family detached home is located on that portion of the parcel that is not subject to the rezoning request
- Surrounding Development:

North: Back Creek

East: Seaford Scallop and Wells Ice & Cold Storage

South: Single-family detached homes

West: Single-family detached homes

- Proposed Development: 190' pier extension

### **CONSIDERATIONS/CONCLUSIONS**

1. Established in 1979, Seaford Scallop Company, Inc. is located on Back Creek at the end of Shirley Road, occupying approximately 2.88 acres. A sister company under the same ownership, Wells Ice & Cold Storage, occupies approximately 1.43 acres immediately to the west and has been in operation since 1987. These properties are zoned WCI (Water-oriented Commercial/Industrial), where Seafood Receiving, Package, and Storage is permitted as a matter of right. There is a high degree of interdependence between the two businesses. Wells Ice & Cold Storage sells ice to Seaford Scallop and to other boats that land their scallops at the Seaford Scallop pier. In addition, Wells Ice & Cold Storage purchases scallops from Seaford Scallop, which it then sells fresh to local customers or freezes for sale to large national customers. Seaford Scallop also stores scallops in the Wells Ice freezers when market conditions are soft.
2. Over the years as the National Marine Fisheries Service has limited the number of days that a licensed scallop vessel can fish (see attached letter from Conway H. Sheild, III), Seaford Scallop has found itself in need of additional docking facilities because of the increased time that the boats are required to spend at the pier. There is no room to construct additional mooring facilities at the existing Seaford Scallop and Wells Ice facilities, so to help address this need, Seaford Scallop is purchasing a state dock (Slaight's Wharf) owned by the Virginia Department of Transportation (VDOT) and located on a half-acre parcel that lies between Seaford Scallop and Wells Ice & Cold Storage. (In support of this effort, the Board last September approved the abandonment of this public landing and a 230-foot segment of the Shirley Road right-of-way that provides access to the dock.) To further increase its docking capacity, Seaford Scallop purchased the subject 3.32-acre parcel with the intent of utilizing the water rights to extend the existing Wells Ice pier in a westerly direction by approximately 190 feet. The applicant estimates that such an extension could accommodate up to six (6) of the 21 boats that operate out of the Seaford Scallop facility. Since the property is zoned RR, and Seafood Receiving, Packing, and Storage is not permitted in the RR zoning district, the applicant has submitted this request to rezone an approximately 1.8-acre portion of the parcel to WCI. The applicant plans to subdivide the parcel, leaving the residual 1.5-acre RR-zoned portion, on which a single-family detached home currently sits, as a residential lot that would serve as a buffer between the Seaford Scallop/Wells Ice landholdings to the east and existing residential development to the west.
3. In reference to this area of the County, the Comprehensive Plan states,

*Water-dependent uses located off of Shirley Road include Seaford Scallop, Ewell and Freeman Seafood, Mills Marina, and Calvin Hudgins Welding. These businesses, which provide support services for seafood landing and*

*processing, boat fueling and re-supply, and boat repair operations, are designated Limited Business in recognition of the low intensity commercial use. The state dock at the end of Shirley Road does not appear to provide sufficient public access to water and consideration could be given to establishing a public use facility in this area that would accommodate the public water access needs of the community and provide for other water-related uses.*<sup>1</sup>

In this case, as stated in the Land Use element of the Comprehensive Plan, the Limited Business designation is “intended to provide opportunities for various types of activities requiring access to the water. These types of activities have historically been conducted in such areas as Waterview, Seaford, Dandy, and Dare, and their locational requirements often dictate that they be within or in close proximity to established residential neighborhoods or in areas with limited surface transportation access.”<sup>2</sup> Apart from these water-related uses, the surrounding area is designated for Low-Density Residential development, primarily because of environmental constraints (wet soils, flood hazard areas, etc.), relatively poor road access, and proximity to Back Creek.

Since the text of the plan states that the intent of the Limited Business designation is merely to recognize *existing* water-related uses and does not address the expansion of such uses, it is likely that the 2015 Land Use Map designation reflects inaccurate mapping rather than any intent to expand the commercial designation. (The quality and accessibility of the County’s land records and GIS mapping has greatly improved since 1996-1999 when the Comprehensive Plan was updated.)

4. Expansion of a commercial/industrial activity in a largely residential area must be closely scrutinized to ensure that the residential character will be protected. In recognition of this concern, the property owner has voluntarily proffered a series of conditions that will apply to the development of the subject property if the application is approved and the conditions accepted by the Board. These proffers, outlined below, are intended to mitigate any potentially adverse impacts the proposed rezoning could have on surrounding properties or the County.
  - **Outdoor lighting:** The applicant has proffered to limit outdoor lighting such that lighting levels will not exceed 0.1 foot-candle at any property line.
  - **Noise:** The applicant has proffered to prohibit the use of outdoor messaging loudspeakers on the property.
  - **Landscaping:** The applicant has proffered to install and maintain a Type 25 (25’) landscaped transitional buffer, supplemented by an 8-foot privacy fence, along the proposed boundary between the WCI- and RR-zoned properties. In addition, a 20’ front landscape yard will be installed along Shirley Road and, as noted on the Concept Plan, will be planted with shrubs and other vegetation to achieve a natural, visual, and noise barrier.

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<sup>1</sup> Charting the Course to 2015: The County of York Comprehensive Plan, Page 88

<sup>2</sup> Comprehensive Plan, Page 80

- **Signage:** The applicant has proffered that all signs will be of the monument type. The Zoning Ordinance further limits the property to a single freestanding sign with a maximum height of six feet (6') and a maximum area of 32 square feet.
- **Road access:** The applicant has proffered that there will be a single entrance to the property on Shirley Road. This will help to ensure the safety of turning movements by large trucks on a narrow road where multiple entrances could cause problems with sight distance.

In addition, the applicant has proffered to exclude most of the uses that would ordinarily be permitted, either as a matter of right or with a Special Use Permit, in the WCI district. Uses that will still be permitted as a matter of right if this application is approved subject to the conditions are

- Aquaculture
- York County public facilities (schools, libraries, jails, offices, etc.)
- Marina, Dock, Boating Facility (Commercial)
- Marine Railway, Boat Building, and Repair
- Seafood Receiving, Packing, Storage
- Sewage Pump/Lift Stations

Finally, the applicant has proffered to limit the number of employees at Seaford Scallop and Wells Ice & Cold Storage to existing levels in order to prevent any increase in traffic that could lead to further deterioration in the Level of Service on Shirley Road.

With these proffered conditions in place, I believe the proposed rezoning and pier extension would not increase the scale of seafood receiving activities, although it would extend those activities closer to neighboring residences, reducing the distance between the edge of the pier and the nearest residential property line from about 400 feet to approximately 250 feet and affecting somewhat the view of Back Creek from nearby waterfront homes (and from residential properties on the opposite side of Back Creek). It should also be noted, however, that if the property were developed residentially it is likely that an additional dock would be built anyway, albeit not as large or as intensively utilized as a commercial pier.

5. The applicant has indicated that it has no plans at present to develop the subject property. Its only immediate plans are to utilize the property as a spoils site in connection with the dredging activities associated with the pier construction. Under the current zoning, the subject parcel has enough acreage to be subdivided into a maximum of three (3) single-family detached home lots; however, environmental constraints and the lack of sufficient road frontage might limit the potential lot yield to two (although the parcel could potentially be developed as a family subdivision, which does not require public road frontage). There is already a single-family detached home in the northwest portion of the parcel, so additional development of the parcel would be limited to one or two homes at most under the current zoning.

6. The subject property fronts on Shirley Road, which is substandard in that the pavement width is approximately 16 feet in a 30-foot right-of-way; the minimum standard for this type of road is 22 feet in a 50-foot right-of-way. The average daily traffic on this segment of Shirley Road (as of 2001, the latest year for which this data is available) is approximately 470 trips. In recognition of these deficiencies, the applicant has proffered to limit the combined employment of Seaford Scallop and Wells Ice & Cold Storage to its current maximum of 220 employees until such time as either Shirley Road is widened or an alternate means of ingress and egress is established. There are currently no plans to improve Shirley Road, and efforts to construct an alternate route have been hindered by environmental and financial hurdles. Until 1997 the County's Six-Year Secondary Road Plan included a project to construct a new "Shirley Road Alternate" along an alternative alignment extending from the end of Shirley Road at Seaford Scallop directly to Seaford Road. It was dropped from the plan when VDOT determined that the project would have significant impacts on wetlands and would serve materially the same function as an existing road and therefore would not be eligible for secondary road funds. If and when the subject property is developed, the property owner will be required to reserve half the right-of-way deficiency (10 feet) along Shirley Road for future road improvement. As noted, the applicant has proffered that there will be only one entrance to the property from Shirley Road.
7. Located on Back Creek, much of the subject parcel lies within the Chesapeake Bay Resource Protection Area (RPA), and most of the remainder lies within the Resource Management Area (RMA). Accordingly, any development of the property will be subject to the provisions of the Environmental Management Area (EMA) overlay district. Development in the RPA is permitted only if it is water-dependent or constitutes redevelopment. A new or expanded water-dependent facility may be allowed provided that four conditions are met:
  - It does not conflict with the Comprehensive Plan,
  - It complies with the performance standards set forth in the EMA provisions,
  - Any non-water-dependent component is located outside of the RPA, and
  - Access will be provided with the minimum disturbance necessary. Where possible, a single point of access will be provided.

In addition, any development in the RMA will be subject to special performance standards governing stormwater runoff and water quality. The proposed pier would also require the approval of the Virginia Marine Resources Commission.

8. In 1994 this property was the subject of another rezoning application. In that case, the previous property owner sought to rezone the entire 3.32-acre parcel from RR to WCI, possibly though not necessarily for the purpose of constructing a marina, which he had been trying to develop for several years without success. The Board denied the rezoning because it would likely have generated significant commercial activity in a largely residential area and would have increased traffic on a substandard Shirley Road. The current application differs from the 1994 application in several significant ways. Most importantly, there would be no marina. In fact, Seaford Scallop has

proffered to exclude almost every conceivable commercial and industrial use not related to the seafood industry and to limit employment to existing levels so that there will be no increase in traffic and thus no adverse impact on Shirley Road, as a result of the rezoning. The 1994 applicant, in contrast, proffered to exclude only four commercial uses, leaving the door open to numerous retail and other nonresidential activities that would have been significant traffic generators. Finally, the proposed rezoning would apply only to a little over half of the subject property, leaving a 150'-wide, 1.5-acre lot as a buffer between the residential areas to the west and any activity associated with either Seaford Scallop or Wells Ice & Cold Storage.

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission considered this application at its March 10 meeting and conducted a public hearing at which the applicant's representative and three citizens spoke. Issues and questions raised by the citizens concerned lighting, the public boat landing, the condition of Shirley Road, and enforcement of proffered conditions. After staff addressed these items, the Commission voted 7:0 to recommend approval of the application subject to the proffered conditions. (For more details, please see the attached Planning Commission Minutes excerpts.)

### **COUNTY ADMINISTRATOR RECOMMENDATION**

I believe the proposed rezoning would allow the applicant to expand its docking capacity with little adverse impact on the surrounding neighborhood. The proffered conditions will limit noise, visual, and traffic impacts. The intensity of seafood receiving activities will not increase, although existing activities will be more noticeable to nearby residents because of the increased proximity of the pier. However, the proposal to retain as a buffer an approximately 1.5-acre residential lot – which would be two to three times larger than any of the residential lots that it would be buffering – will further help to preserve the residential character, and the proposed pier extension will generate no new vehicular traffic on Shirley Road. In summary, I view this application as an opportunity to accommodate the particular needs of one of the County's major private employers without endangering the quality of life for nearby residents. Therefore, based on the considerations and conclusions as noted, I recommend that the Board approve this application subject to the conditions voluntarily proffered by the applicant. This can be accomplished through the adoption of proposed Ordinance No. 04-5.

Carter/3337:TCC

#### **Attachments**

- Excerpts of Planning Commission Minutes, March 10, 2004
- Zoning Map
- Vicinity Map
- Concept Plan
- Letter from Conway H. Sheild, III to Timothy C. Cross dated February 12, 2004
- Proffer Statement
- Proposed Ordinance. No. 04-5